

CASE: 1:18-CV-08653-VEC, Valerie E. Caproni

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January 4, 2021

HON. Valerie E. Caproni, district judge
U.S. District Court
500 Pearl Street
New York, New York 10007-1312

SUBJ: NOTICE OF INTENT TO FILE APPEAL WITH THE SECOND CIRCUIT

REF: (1) 28 U.S.C. § 1292(a)(1) (see (a)(2) and (a)(3))

MAY IT PLEASE THE COURT,

As you know the undersigned is a *pro se* non-attorney Plaintiff who has completed one half semester of law school before withdrawing from the law program after the first semester mid-term examinations. Plaintiff was in academic good standing when he withdrew.

ISSUE NO. ONE: Extensions of time to file Answers for the Defendant

With all due respect, concerning the ORDER Docketed as no. **180**, the undersigned has serious questions about the interpretation of law that was relied upon to provide the Defendant an additional thirty (30) days to respond to the Second Amended Complaint (SAC) (**Dkt. 88**) after previously ordered twice to provide an "Answer" to the SAC over one year ago; see magistrate's reliance on *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 475 (2d Cir. 2006) (citation omitted). The magistrate's interpretation of *Triestman* involves a controlling question of law and appears to be in clear error.

The *Triestman v. F.B.P.* case addresses liberal pleading standards and nothing else. In fact, the *Triestman* court opined, "and that *pro se* status "does not exempt a party from compliance with relevant rules of procedural and substantive law," *Traguth*, 710 F.2d at 95 (citation omitted)."

The lavish over-compensation of extended deadlines granted to the Defendant is breathtaking. Over a year has passed since the magistrate "ordered" the Defendant to file an "Answer" to the operative SAC (**Dkt. 88**). This is the latest example of deadlines that have been extended weeks and months into the future after the Defendant failed to comply with the Federal Rules of Civil Procedure (Fed. R. Civ. Proc.).

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Further, the magistrate apparently feels it is necessary to admonish the Plaintiff in his Report and Recommendation (**R&R**) **Dkt. 181** for availing himself of authorized amendments to pleadings as articulated in the Fed. R. Civ. Proc. The Plaintiff has done nothing worthy of the magistrate's "shaming" related to the so-called "clogging of the docket", as expressed in the **R&R** (**Dkt. 181**).

The Defendant has been engaged in three years of federal litigation in the Eastern District of Virginia and has been admonished by the presiding judge in that matter to submit documents according to the deadlines promulgated by the Fed. R. Civ. Proc., see *Steele v. Goodman*. The Defendant is knowledgeable about the need to comply with Fed. R. Civ. Proc. Deadlines.

Pursuant to **ref: (1)** and with regards to **Dkt. 180** the undersigned requests that this district court agree that this matter of the magistrate's ORDER (**Dkt. 180**) should be reviewed by the Second Circuit Court of Appeals. Therefore, the undersigned seeks permission from this Court to file an interlocutory appeal pursuant to the collateral order doctrine.

The Plaintiff hereby requests an additional ten (10) days to prepare any required pleadings for the Second Circuit Court of Appeals.

Issue No. 2: Preliminary Injunctive Relief

With regards to the matter described in the magistrate's **R&R** (**Dkt. 181**). As the Court is aware, when a party loses a motion for a preliminary injunction, an immediate appeal is allowed.

The **R&R** (**Dkt. 181**) is representative of the Preliminary Injunctive Relief (P.I.R.) process, which is presently incomplete as to finality of judgements (required for appeal). The body of documents yet to be filed (Defendant's reply to Plaintiff's opposition to the **R&R** and the final order of the district court on granting or denying the Plaintiff's P.I.R. motions have yet to be docketed.

The Plaintiff wishes to avoid another ten (10) month delay from the time a motion for P.I.R. is filed (see **Dkt. 68, 69 and 71**) until such motions are dismissed as moot.

If the magistrate allows several weeks (rather than five (5) days as articulated in the Fed. R. Civ. Proc.) for the Defendant to file his reply to the Plaintiff opposition to the **R&R** (**Dkt. 181**), then the Plaintiff must contend with two separate and independent requests for appellate review.

To conserve the scarce resources of the Second Circuit, it may be advisable to have both issues consolidated into one omnibus appeal package, which would encompass **Dkt. 180** and **Dkt. 181** and the downstream documents that would conclude the P.I.R. matter to a degree of finality

This underscores the need for a ten (10) day extension of any appellate deadlines associated with Issue No. One, **Dkt. 180**.

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SUMMARY

Timing would create a hardship on the Plaintiff to file two (2) separate petitions for appeal.

The magistrate's ORDER (**Dkt. 180**) is presently ripe for appellate review if the Court agrees with the Second Circuit to allow a hearing of a collateral issue which does not impact the Defendant's rights.

This underscores the need for a ten (10) day extension of any appellate deadlines associated with **Issue No. One**, magistrate's ORDER (**Dkt. 180**).

Therefore, the Plaintiff seeks a ten (10) day extension of any appellate filing deadline requiring a petition or like pleading.

Thank you for your kind consideration of this matter.

Respectfully,


D. George Sweigert
Plaintiff

1.4.21

Courtesy copy provided:

Catherine O'Hagan Wolfe
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Second Circuit Court of Appeals
Thurgood Marshall United States Courthouse
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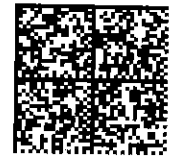


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